

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Irn Coury	Team: Team # 2	CCRB Case #: 200804497	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Friday, 03/28/2008 3:00 PM	Location of Incident: Outside and inside of the 34th Precinct stationhouse (4295 Broadway)	Precinct: 34	18 Mo. SOL 9/28/2009	EO SOL 9/28/2009	
Date/Time CV Reported Fri, 03/28/2008 4:48 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/28/2008 4:48 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Neil Zuber	04696	931483	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Daniel Schwarz	03747	916662	034 PCT
2. LT Kevin Colon	00000	915477	034 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Neil Zuber	Abuse: Sgt. Neil Zuber stopped § 87(2)(b)	
B.SGT Neil Zuber	Abuse: Sgt. Neil Zuber searched § 87(2)(b)	
C.SGT Neil Zuber	Abuse: Sgt. Neil Zuber damaged § 87(2)(b) s property.	

Synopsis

On March 28, 2008, § 87(2)(b) filed the following complaint over the phone with the CCRB:

On March 28, 2008, at approximately 3:00 PM, § 87(2)(b) was filming the outside of the 34th Precinct stationhouse (4295 Broadway) in Manhattan when Sgt. Neil Zuber stopped him (**Allegation A**). Sgt. Zuber escorted § 87(2)(b) into the stationhouse where he frisked and searched him (**Allegation B**). Sgt. Zuber also examined the video tape (**Allegation B**). While the officers viewed the contents of the video, § 87(2)(b)'s footage was taped over (**Allegation C**).

§ 87(2)(g)

This case was re-assigned from Inv. Snodgrass to Inv. Coury on September 16, 2008.

Summary of Complaint

§ 87(2)(b) (*Encl. 4A-P*)

§ 87(2)(b) was interviewed at the CCRB on April 22, 2008. § 87(2)(b) provided a telephone statement on April 16, 2008. § 87(2)(g)

§ 87(2)(b) stated that on March 28, 2008, at approximately 3:00 PM, he was walking in the vicinity of the 34th Precinct stationhouse. He was alone. He was wearing a Mets jacket, jeans, and eyeglasses. He was carrying a black plastic bag in one hand and a camcorder in the other. The black bag contained an audio/video cable, a USB cable, a power adapter, and an umbrella. As § 87(2)(b) approached the 34th Precinct stationhouse (4295 Broadway), walking on the same side of the street as the stationhouse, he turned on his camcorder and began recording the outside of the building. § 87(2)(b) stated that he was merely passing by the stationhouse and recorded the façade for less than 3 minutes. As he recorded he made comments such as, "These racist scumbags, they be killing black people, brown people," in a normal speaking voice. § 87(2)(b) stated that he was filming the precinct for fun, for "memories," because he was free to do so, and to show his friends, and possibly to put it on YouTube. He heard a voice behind him saying, "Excuse me, sir. Excuse me, sir. Excuse me, sir." The person who said this (identified by the investigation as Sgt. Neil Zuber) was in plainclothes but showed § 87(2)(b) a badge in his wallet. § 87(2)(b) "knew" Sgt. Zuber had heard the comments he had made about the police, but Sgt. Zuber made no mention of them. Sgt. Zuber said, "Give me that," and grabbed the camera out of § 87(2)(b)'s hand. Sgt. Zuber then grabbed § 87(2)(b) roughly by the left arm. § 87(2)(b) said, "Don't touch me," and turned his arm over in an attempt to remove Sgt. Zuber's grip. Another, uniformed officer, PO1 (unidentified by the investigation, and described as a "fat" blonde white male, 5'10" in uniform), came "out of the blue" and grabbed § 87(2)(b)'s other arm. Sgt. Zuber and PO1 then escorted § 87(2)(b) into the stationhouse.

Inside the stationhouse, in front of the front desk, Sgt. Zuber asked § 87(2)(b) for ID and § 87(2)(b) produced his NY State ID card. Sgt. Zuber asked § 87(2)(b) if he could search him. § 87(2)(b) consented, saying, "I have nothing to hide. I'm in the truth." § 87(2)(b)'s pockets contained a glasses case, some candy, a key chain, and a wallet. Sgt. Zuber patted § 87(2)(b)'s clothing and felt all the items, only pulling out the glasses case. (It should be noted that § 87(2)(b) initially stated that he was "strip-searched," but then explained that he was mistaken, and no search beyond that described above was conducted.) Sgt. Zuber also looked in the black plastic bag. At some point, Sgt. Zuber confiscated the camcorder, taking it to some other area of the stationhouse, out of sight of § 87(2)(b) § 87(2)(b)

remained in the main visitor area of the stationhouse. While § 87(2)(b) remained in this area, Sgt. Zuber, PO1, and two other uniformed male officers (unidentified by the investigation) spoke to him about filming the precinct. All four officers told him that he could not film the precinct without a permit. § 87(2)(b) told the officers, “You people are scared,” referring implicitly to the possibility that he had been filming for terrorist purposes. The officers responded, “Yes, we’re scared.”

After approximately one hour, § 87(2)(b) s camcorder and all his other belongings were returned to him, and he was released. § 87(2)(b) stated that the police “could have done better,” because he “got them mad” – they could have kept him at the stationhouse for 12 hours, and he was surprised they did not. When § 87(2)(b) later reviewed the tape in the camcorder, he saw that the section in which he had recorded the façade of the stationhouse had been recorded over. A black cover was put over the camera, but the audio recorded, and officers’ voices and radio transmissions can be heard in the background. § 87(2)(b) has kept the tape for evidence. He did not have the tape at the time of his CCRB statement, but stated that he would provide a copy for the investigator when he found it.

§ 87(2)(b) stated that he has not had previous interactions with any of the officers involved in the incident, or with the 34th Precinct; however, he also stated that he and officers “don’t get along” because police officers “will assume anything.”

Photo array

On September 8, 2008, at the CCRB, § 87(2)(b) viewed the following sets of photos.

1A: Sgt. Zuber; 1B: Sgt. Schwarz; 1C: PO Quirk; 1D: PO Henke;
2A: PO Kelly; 2B: PO Arnedos; 2C: Sgt. Bourbeau; 2D: filler;
3A: Lt. Colon; 3B: PO Gilson; 3C: Filler; 3D: PO Mcclintock;
4A: PO Lavenski; 4B: PO Campos; 4C: PO Caminito; 4D: PO Ratynski;
5A: filler; 5B: PO Reifer; 5C: filler; 5D: filler;
6A: PO Hewitt; 6B: PO Schoefer; 6C: PO Labate; 6D: filler;
7A: PO Capitini; 7B: filler; 7C: filler; 7D: filler;
8A: PO Kraft; 8B: PO Walsh; 8C: PO Oconnell; 8D: PO Beattie;
9A: filler; 9B: filler; 9C: filler; 9D: PO Maric.

§ 87(2)(b) stated that 1A (Sgt. Zuber) was the plainclothes officer [PO1] who first approached him. § 87(2)(b) stated that 1B (Sgt. Schwarz) was the other, uniformed officer [PO2] who approached him outside. § 87(2)(b) stated that 3A (Lt. Colon) was inside the stationhouse, and after PO1 searched him, this officer spoke to him, telling him, “I’m going to ask you questions, and all you have to do is answer.” This officer then proceeded to ask his name, what he was doing, and what was in his bag. § 87(2)(b) stated that 7B (filler) was in the back of the stationhouse but did not do anything or say anything to § 87(2)(b).

Results of Investigation

Sgt. Neil Zuber (Encl. 5A-F)

On January 14, 2009, Sgt. Neil Zuber was interviewed at the CCRB. On March 28, 2008, Sgt. Zuber worked from 2:50 PM to 11:47 PM as patrol supervisor with PO O’Connell. However, the incident occurred before roll call, so Sgt. Zuber was not with PO O’Connell at the time of the incident. At the time of the stop, Sgt. Zuber was not in uniform. Sgt. Zuber had the following memo book entries regarding this incident:

*1455 stop § 87(2)(b) DOB § 87(2)(b) client ID number § 87(2)(b) in front of stationhouse for suspicion of terrorism
1515 r/c [roll call] squads 1 and 3 inspect [illegible]
1550 UF 250 above [stop-and-frisk report for § 87(2)(b)]*

On March 28, 2008, at approximately 2:55 PM, Sgt. Zuber was walking towards the 34th Precinct stationhouse at the beginning of his tour. Although Sgt. Zuber was the patrol supervisor for that tour, he had not yet put on his uniform and was not yet with his partner.

Sgt. Zuber was walking north on Broadway on the west side towards the stationhouse. At 181st Street, he saw a man (identified as § 87(2)(b)) walking in front of him with a video camera. § 87(2)(b) had the screen of the camera out so that as Sgt. Zuber walked behind him, he could see what § 87(2)(b) was taping. Sgt. Zuber saw that § 87(2)(b) was zooming in on the patrol cars parked at the stationhouse. Sgt. Zuber saw the camera pan out to record the entire stationhouse and zoom in on windows and doorways. As they walked past the stationhouse parking lot, § 87(2)(b) filmed the inside of the lot, the officers coming in and going out, the area where the officers park their cars, and the area where the gas pumps are. § 87(2)(b) was talking to himself, but Sgt. Zuber did not recall what § 87(2)(b) was saying. Sgt. Zuber saw § 87(2)(b) filming the outside of the stationhouse for “a couple of minutes” before he stopped him.

As § 87(2)(b) approached the front door of the stationhouse with Sgt. Zuber behind him, two uniformed police officers (Sgt. Zuber did not recall the identities of these officers) were exiting the stationhouse approximately twenty or thirty feet in front of § 87(2)(b) and Sgt. Zuber. Sgt. Zuber signaled for the two officers to come towards him, took out his shield, and stepped in front of § 87(2)(b). Sgt. Zuber put his hand on § 87(2)(b)'s shoulder to get his attention and showed him his badge. Sgt. Zuber told § 87(2)(b) that he needed to speak with him inside the stationhouse. § 87(2)(b) looked startled. The uniformed officers approached and told § 87(2)(b) that Sgt. Zuber was a police officer, and § 87(2)(b) cooperated.

Sgt. Zuber explained why he suspected § 87(2)(b) of terrorism: § 87(2)(b) was filming a government building, and government buildings are considered “soft targets” for terrorists. Filming of “soft targets” like the police stationhouse raises suspicion of terrorism. “His actions didn’t make [Sgt. Zuber] think that he was necessarily planning to bomb something, but it was very suspicious and made [Sgt. Zuber] want to know why he was doing it.” § 87(2)(b) was not free to leave. Sgt. Zuber did not recall why § 87(2)(b) was filming the stationhouse. While filming, § 87(2)(b) “was rambling and saying something very specific that he kept saying over and over again,” but Sgt. Zuber did not recall what § 87(2)(b) was saying.

Inside the stationhouse, Sgt. Zuber asked § 87(2)(b) for his identification, and § 87(2)(b) gave Sgt. Zuber his driver’s license. Sgt. Zuber frisked the outside of § 87(2)(b)'s clothing because he suspected him of terrorism, a violent crime. Upon frisking the outside of § 87(2)(b)'s heavy jacket, Sgt. Zuber felt “big, lumpy things.” Sgt. Zuber did not know what these were, but they felt like a hard object that might have been a weapon. Sgt. Zuber reached inside § 87(2)(b)'s exterior jacket pockets and found a cell phone, a key chain, and “things like that.” Sgt. Zuber did not recall if § 87(2)(b) had a bag, much less if he searched it.

Sgt. Zuber took § 87(2)(b)'s video camera into the stationhouse so that he could play it to verify its contents when speaking with the precinct detective squad and NYPD Intelligence who needed to know what was on the tape (Sgt. Zuber stated, “we played back what he had been videotaping.” When asked to whom the “we” referred, Sgt. Zuber stated that he is not very technical and probably asked anyone who was present if they could help him use the video camera [*Note: Sgt. Zuber offered this information before being asked about the video being taped over and before being confronted with the physical evidence of the taped-over video*]). Sgt. Zuber did not recall who was with him when he viewed the footage. The footage was not taped over. The video showed everything that Sgt. Zuber had seen § 87(2)(b) recording. Sgt. Zuber checked with the Department of Motor Vehicles and NYPD Intelligence to make sure there were no warrants out for § 87(2)(b) and to ensure that § 87(2)(b) was not on any watch lists.

Sgt. Zuber then went to roll call, and then Sgt. Zuber went to the address § 87(2)(b) provided for his residence, which was somewhere within the confines of the 34th Precinct. Sgt. Zuber spoke with the people there who told him that they were § 87(2)(b)'s relatives (Sgt. Zuber did not recall the relation), and that § 87(2)(b) no longer lived there because he is mentally unstable.

Sgt. Zuber did not recall when § 87(2)(b) was let go from the stationhouse. § 87(2)(b) repeatedly asked for his license back, but Sgt. Zuber told him that he would not return the license until the

investigation had concluded. The investigation concluded when all the checks came back verifying that § 87(2)(b) was not on any watch lists and had no warrants. Sgt. Zuber did not recall which other officers were present during the incident.

After providing his statement, Sgt. Zuber listened to the VHS tape provided by § 87(2)(b) that contains no video footage. Sgt. Zuber did not know what was happening during the duration of the tape. Sgt. Zuber did not know whose voices were heard on the tape. Sgt. Zuber did not know which sergeant was referred to on the tape. Sgt. Zuber noted that the time stamp on the video is 3:51 to 3:54 PM, which was approximately an hour after the stop. Sgt. Zuber did not think that § 87(2)(b) was held for that long.

Lt. Kevin Colon (Encl. 6A-E)

On January 27, 2009, Lt. Kevin Colon was interviewed at the CCRB. On March 28, 2008, Lt. Colon worked from 2:45 PM to 11:30 PM as the desk officer. Lt. Colon had no entries in his memo book regarding this incident.

On March 28, 2008, at approximately 3:00 PM, Sgt. Neil Zuber brought a man (identified by the investigation as § 87(2)(b)) into the 34th Precinct stationhouse. Sgt. Zuber explained to Lt. Colon that he was bringing § 87(2)(b) into the stationhouse to run checks on him on suspicion of terrorism because § 87(2)(b) was taking pictures of the outside of the stationhouse, including the entrance of the rear parking lot and the private vehicles of members of service. Lt. Colon saw § 87(2)(b) but he never spoke with him. Lt. Colon never viewed the pictures that § 87(2)(b) was taking or any evidence that Sgt. Zuber had. Lt. Colon did not see any other officers interact with § 87(2)(b). Lt. Colon did not see Sgt. Zuber question § 87(2)(b). Sgt. Zuber brought § 87(2)(b) to a bench in the civilian waiting area in the stationhouse, and Lt. Colon could not see § 87(2)(b) from his desk without moving. Lt. Colon did not recall the presence of any other officer. Lt. Colon did not recall § 87(2)(b) having a video camera. Lt. Colon did not recall if § 87(2)(b) had anything with him. Lt. Colon had never seen § 87(2)(b) before. § 87(2)(b) was not with anyone else, and he looked disheveled. Lt. Colon did not recall § 87(2)(b) saying anything. After Sgt. Zuber ran the checks on § 87(2)(b) and everything worked out, he let § 87(2)(b) leave and prepared a stop-and-frisk report. Lt. Colon did not run any of the checks on § 87(2)(b).

After providing his statement, Lt. Colon viewed/listened to the recording provided by § 87(2)(b). Lt. Colon recognized his own voice and that of Sgt. Zuber, but he was unable to say to whom the other voices belong. Lt. Colon did not know what was going on during the recording.

Sgt. Daniel Schwarz (Encl. 7A-B)

On March 24, 2009, Sgt. Daniel Schwarz was interviewed at the CCRB. Sgt. Schwarz was not on duty at the time of the incident; Sgt. Schwarz began work on March 28, 2008, at 5:26 PM.

Sgt. Schwarz did not recall the incident. At 3:00 PM on March 28, 2008, Sgt. Schwarz had not yet begun his tour. Sgt. Schwarz viewed the command log and confirmed that he signed in at 4:06 PM. Sgt. Schwarz viewed a photograph of § 87(2)(b) but he did not recognize § 87(2)(b) and did not recall ever interacting with § 87(2)(b). The investigator tried to show Sgt. Schwarz a copy of the video/audio provided by § 87(2)(b) but, due to technical difficulties, this was not possible.

Sgt. Schwarz did not know precisely what he did when he arrived at the stationhouse on March 28, 2008, but he stated that he usually either goes to the gym or does administrative work. Sgt. Schwarz did not see any officers dealing with a video camera inside the stationhouse or hear about any officers dealing with a video camera. Sgt. Schwarz did not know anything about the incident until he was notified for his appearance at the CCRB.

NYPD documents

Stop-and-frisk report (Encl. 8A-B)

Sgt. Zuber stopped § 87(2)(b) on suspicion of terrorism. The report was prepared by Sgt. Zuber and reviewed by Lt. Colon and indicates that the stop lasted for 50 minutes. § 87(2)(b) was observed for three minutes. The circumstances leading to stop are described as actions indicative of casing victim or

location, furtive movements, and videotaping police building and grounds. That § 87(2)(b) was observed videotaping the 34th Precinct stationhouse and grounds is also listed as an additional factor. § 87(2)(b) was frisked on the basis of a refusal to comply with officers' directions; furtive movements; a bag; and a black plastic bag containing umbrella, camera charger, and cable. § 87(2)(b) was searched on the basis of a hard object that turned out to be a glasses case, folding umbrella, camera charger and cable. § 87(2)(b)'s demeanor was agitated and uncooperative. § 87(2)(b) made the following remarks, "Most of the time truth. I know the constitution. The truth sets you free."

Roll call (Encl. 9A)

On March 25, 2008, Lt. Kevin Colon, Sgt. Neil Zuber, and Sgt. Daniel Schwarz worked tour 3.

Command log (Encl. 10A-D)

The command log contains no information regarding § 87(2)(b). It shows that Sgt. Schwarz signed in at 4:06 PM.

Video

The video provided by § 87(2)(b) consists of a blank screen with officers talking to each other and getting radio transmissions in the background. At the beginning, a male officer can be heard saying something about approaching the outside of the stationhouse. One male voice refers to another as "Sarge." Lt. Colon acknowledged that his voice can be heard on the tape as can the voice of Sgt. Zuber.

CCRB histories (Encl. 2A-B)

In his six years with the NYPD, Sgt. Neil Zuber has had no allegations of misconduct substantiated against him by the CCRB. § 87(2)(b) has filed no other complaints with the CCRB.

Criminal conviction history

Due to the ubiquity of § 87(2)(b)'s last name, the investigation cannot determine § 87(2)(b)'s criminal conviction history.

Conclusions and Recommendations

Subject officer identification

Sgt. Neil Zuber completed the stop-and-frisk report for § 87(2)(b) was identified from a photo array by § 87(2)(b) as the officer who stopped him, and admitted stopping, questioning, frisking, and searching § 87(2)(b). Sgt. Zuber has thus been identified as the officer who stopped, questioned, frisked, and searched § 87(2)(b). In regard to the taping-over of § 87(2)(b)'s video, Sgt. Zuber admitted watching the video footage, and his voice can be heard on the recording. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Disputed and undisputed facts

It is not disputed that § 87(2)(b) was filming the outside of the 34th Precinct stationhouse and was stopped, questioned, frisked and searched by Sgt. Neil Zuber who then viewed the video footage taken by § 87(2)(b). Although no officer admitted taping over § 87(2)(b)'s footage, it is not disputed that the footage was taped over.

Allegations not pled

§ 87(2)(g)

§ 87(2)(g)

Assessment of the evidence

Regarding the taping over of § 87(2)(b)'s video footage of the outside of the 34th Precinct stationhouse, § 87(2)(b)'s video tape provides definitive evidence that his footage was indeed taped over. However, as § 87(2)(b) did not witness this and no officer admitted doing so or having knowledge of its having been done, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) based on Lt. Colon's statement, Lt. Colon and Sgt. Zuber were present when the footage was taped over because their voices can be heard on the recording.

Allegation A: Sgt. Neil Zuber stopped § 87(2)(b)

Allegation B: Sgt. Neil Zuber searched § 87(2)(b)

As discussed above, there is no dispute that Sgt. Neil Zuber stopped § 87(2)(b) on suspicion of terrorism, frisked him, searched him, searched his camera, and temporarily detained him after observing § 87(2)(b) filming the outside of the 34th Precinct stationhouse. According to the NYPD hand out on possible indicators of terrorist activity, videotaping government facilities beyond what a normal tourist would do or at non-tourist sites “may merit further inquiry” into whether the individual is planning terrorist activity (Encl. 1A). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

As Sgt. Zuber explained, he frisked § 87(2)(b) because he suspected § 87(2)(b) of a violent crime (terrorism). According to Barry Kamins, “a frisk is permitted ... when an officer stops a suspect because he reasonably believes the individual committed a *violent crime*” (Encl. 1B). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Kamins explains that if, during the course of a frisk, an officer “cannot legitimately determine whether a hard object is a weapon, he may reach in to determine the nature of the object [or] pull it out” (Encl. 1C-D). § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) Again, Kamins explains that a temporary investigative detention must be “sufficiently limited in scope and duration to accomplish its legitimate purposes in a reasonable manner” (Encl. 1E). Additionally, such detentions generally should not last more than an hour (Encl. 1E).

§ 87(2)(g)

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§ 87(2)(g)

Allegation C: Sgt. Neil Zuber damaged § 87(2)(b) s property.

§ 87(2)(g)

§ 87(2)(b) Based on the statements recorded while the video was being taped over, the officers present were watching the video as they taped over it. Sgt. Zuber testified that he watched the video and that he is not technologically savvy. Sgt. Zuber offered this information when asked about the other persons present when he viewed the video – before he was asked about the video being taped over and before he viewed the evidence of the taped-over video. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Investigator:

Date:

Supervisor:

Irn Coury

Date:

Reviewed by:

Date:

Reviewed by:

Date: